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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,551	02/09/2001	Thomas G. Woolston	032997-028	9095
20985	7590	02/14/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			SMITH, JEFFREY A	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/779,551

Applicant(s)

WOOLSTON, THOMAS G.

Examiner

Jeffrey A. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/3/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Receipt is acknowledged of the Amendment filed August 17, 2004.

Claims 1-50 have been cancelled.

Claims 51-53 have been newly added.

An action on the merits of claims 51-53 follows.

Information Disclosure Statement

The information disclosure statement filed May 3, 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Particularly, FR 2,658,635 and NL 9300266 have not been considered because they are not in the English language and a concise explanation of the relevance has not been provided.

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The information disclosure statement filed May 3, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Particularly, references showing (on the initial copy of Form PTO-1449, enclosed herewith) the Examiner notation "CA" (cannot access) or "CL" (cannot locate) have not been considered because the Examiner could not access the file for that reference or the Examiner could not locate the file for that reference on the media discs provided.

All other references have been considered.

Drawings

The drawings were received on August 17, 2004. These drawings are approved.

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Claim Rejections - 35 USC § 112, First Paragraph

The following is a quotation of the first paragraph of 35

U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 51-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The following subject matter was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

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In claim 51

"open audience of internet participants" (lines 4-5, and elsewhere)

There is no original disclosure for an "open" internet audience.

"without further recourse from the participant seller" (lines 7-8)

The original disclosure does not discuss, with any degree of specificity, the nature of the conditions of a particular sale or transaction.

"wherein the selling instance represents a binding offer to sell the item if the marketplace receives payment information from at least one participant from the open audience of internet participants" (lines 13-15)

Again, the original disclosure does not discuss, with any degree of specificity, the nature of the conditions of a particular sale or transaction.

"facilitation a sales termination event for the selling instance of the item at the electronic marketplace, the termination event locking the data record for the item selling instance to prevent the item from being sold twice and the termination event creating at least two classes of potential purchasers from the open audience of internet participants" (lines 23-24)

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There is no original disclosure which identifies any specific event which can be construed as "a sales termination event". There is no original disclosure that it is such specific termination event which effects a locking of the data record for the item selling instance. There is no original disclosure which specifies that locking is for the purpose of preventing the item from being sold twice (see page 22, lines 24-26). There is no original disclosure that a termination event creates the classes of purchasers (it appears the such classes are created via a posting procedure: page 29, lines 5-7).

"wherein the participant seller of the item is without recourse to rescind the sale of the item after the transaction processor has locked the data record to initiate the sale for the item by processing the selling instance for the item at the electronic marketplace" (lines 34-36)

There is no original disclosure for the participant seller being without recourse to rescind the sale of the item. There is no original disclosure that the transaction processor locks the data record. There is no original disclosure that the sale is initiated by processing the selling instance for the item.

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In Claim 52

"presenting the item for sale to an open audience of internet participants" (line 2-3)

See discussion above with respect to "open audience".

"at an integrated termination and payment processing event" (line 6)

There is no original disclosure for an event in which there is a discrete and coincident termination (of some process) and payment processing event.

"means for creating a termination event at the electronic marketplace" (line 12)

There is no original disclosure for either the function of creating a termination event or any structure that can be interpreted as performing such function.

"the termination event closing the sale of the item by receiving payment for the item and processing payment for the item and locking the data record" (lines 12-14)

There is no original disclosure that any particular event effects a closing of the sale, a payment processing, and a locking of the data record.

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"to assure that the same item does not sell more than once"
(line 15)

See discussion above with regard to "[preventing] the item
from being sold twice".

In Claim 53

"participant can access the accounts" (line 3)

There is no original disclosure in which a participant can
actually access the accounts. The original disclosure is
limited to participants' authorization of funds transfer.

"by book entry transaction" (line 4)

There is no original disclosure that any transfer of funds
authorized by a participant is performed specifically by book
entry transaction.

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Claim Rejections - 35 USC § 112, Second Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 51-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 51, lines 1-2 (and elsewhere in all claims)

The scope of the phrase "electronic presentment of an item for sale from a participant seller" is unclear. This is because such activity appears to entail actions (such as the actual posting of item records) which are not disclosed as being performed by a participant seller.

In claim 51, line 3 (and elsewhere in all claims)

The scope of the phrase "creating an instance of the item for sale" is unclear. The specification does not identify when such "instance" is actually created, nor what actually

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constitutes an "instance of the item for sale". Further, ambiguity is introduced by differing recitations which convey that the instance is created by electronic presentment (claim 51, lines 2-3) or by locking the data record (claim 52, line 14).

In claim 51, lines 4-5 (and elsewhere in all claims)

The phrase "open audience of internet participants" is misdescriptive of the disclosed invention. The nature of the audience cannot be construed as being "open" given that the specification teaches various log-in procedures for participants--thereby creating what might be termed an exclusive (or "closed") internet audience (see page 16, lines 10-11, for example).

In claim 51, line 16

The scope of the phrase "integrated transaction processor" is unclear since the recitation fails to identify the processor's association with any other component of the system in an "integrated" manner.

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In claim 51, lines 23-27

The scope of the activity "facilitating" is not clear. It is not clear what actual involvement the transaction processor has in the functions related to locking the data record. It is also unclear in what capacity the termination event serves to create at least two classes of potential purchasers.

In claim 51, lines 23-27

The manner in which the sales termination actually performs the functions of locking the data record and creating at least two classes of potential purchasers is not clear. It appears that the event may serve in a manner similar to a signal trigger which calls some process that performs the locking and creating functions. Nonetheless, it is difficult to envision that an "event" actually performs said functions. The Examiner notes that a similar occurrence of the phrase "termination event" coupled with associated activity is present in claim 52, 12-19.

In claim 52, lines 4-5

Applicant's portrayal of the first and second tiers appears to be misdescriptive of the disclosed invention. Here the portrayal is of a group (second tier) and a sub-group of the

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group (second tier). The specification, however, teaches two mutually-exclusive sub-groups (e.g. a first, retail tier and second, wholesale tier: see page 2, lines 7-10). Further, the recitation "at the termination event...the first class receiving a first tier price for the item for sale and the second class receiving a different second tier price for the item" (lines 15-19) appears to be in conflict with the original portrayal at lines 4-5 since this recitation conveys that first and second tier prices are established and received by mutually-exclusive first and second sub-classes of a greater class (i.e. the open audience of internet participants). This recitation will be treated in a manner consistent with similar recitations in claim 51 and in a manner consistent with the specification.

In claim 52, line 12

The scope of the phrase "means for creating a termination event" is unclear. The disclosure fails to adequately describe what is meant by "means for creating a termination event".

"Termination means" is not expressly disclosed, nor would one of ordinary skill in the art understand what structure, material, or acts will perform the recited functions.

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In claim 52, line 14

The recitation "to created the selling instance" (emphasis added) appears to be a grammatical error. Such error prevents the intent of the recitation to be clearly conveyed. For examination purposes "created" has been interpreted as --create--.

In claims 51-53

Other minor errors with respect to grammar etc... were noted in the claims. Applicant's assistance in locating and correcting all errors is requested.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 51-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Nahan et al. (U.S. Patent No. 5,664,111).

Claims 51-53

Nahan et al. discloses an electronic marketplace system comprising a database (col. 6, lines 26-31) and a computer (col. 5, lines 49-8). The database stores a data record of an item for sale (col. 2, lines 60-64). The system additionally comprises an integrated transaction processor or means for creating a termination event at the electronic marketplace (col. 6, lines 9-14). The system further comprises an accounts database (see discussion below).

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The Examiner notes that claims 51-53 are recited as system claims, and as such, look to structure to shoulder patentable distinction. Any recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Additionally, the Examiner notes that the respective preambles provide heavy emphasis on the intended use of the systems. Much of the recitations of intended use set forth functions which are later incorporated in the body of the claim. Such incorporations do not move to provide completeness to the recited systems themselves, but merely serve to reiterate the intentions already present in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*,

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187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). None of the functional language, either present in the bodies of the claims or in their respective preambles, serve to structurally distinguish the instant inventions from equivalent structure disclosed by Nahan et al.

Notwithstanding the above treatment of the respective preambles (including functional recitations set forth therein) and claim bodies, the Examiner provides the following claim analysis:

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Regarding the language at claim 51, lines 1-5

The language "for receiving electronic...audience of internet participants" has been considered.

The Nahan et al. system receives electronic presentment of an item for sale (col. 13, lines 29-39, for example). The presentment of the item for sale creates an instance of the item for sale at the electronic market place for the electronic marketplace system to present the item for sale via an instance of the item for sale to an open audience of internet participants. At col. 2, lines 57-59 (for example), a participant (artist) creates an instance of their item for sale ("work for sale": col. 2, line 58). At col. 3, lines 6-9 (for example), a member dealer creates an instance of their item for sale ("offer its customers a 'virtual inventory'": col. 3, lines 7-8). Accordingly, the Nahan et al. system is "for receiving electronic presentment of an item for sale from a participant seller, the electronic presentment of the item for sale creating an instance of the item for sale at the electronic marketplace for the electronic marketplace system to present the item for sale via the instance of the item for sale to an open audience of internet participants". Likewise the Nahan et al.

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computer creates a selling instance for the item at the electronic marketplace (as per claim 51, line 12).

The Examiner notes similar language in claim 52 at lines 1-3; and at lines 8-9. Such language has been similarly treated.

Regarding the language at claim 51, lines 13-15

The language "wherein the selling instance...open audience of internet participants" has been considered.

The Nahan et al. system is capable of creating any selling instance whether such instance represents a legally binding or non-binding offer to sell the item. The Nahan et al. system cannot be construed as being biased in this regard because the nature of the offer as binding or non-binding does not move to effect any structural distinction between the system of the instant invention and the system of Nahan et al.

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Regarding the language at claim 51, lines 16-22

The language "an integrated transaction processor...through the electronic marketplace system" has been considered.

The Nahan et al. system comprises an integrated transaction processor for processing payment from an open audience of internet participants (col. 13, line 62-col. 14, line 5). The transaction processor allows access to a participant account (see "bank to receive funds": col. 13, line 66; and "source of money in the same manner": col. 14, lines 1-3) maintained by the electronic marketplace system for at least one participant from the open audience of internet participants. The participant account maintained by the electronic marketplace system is maintained in an automated accounts database and is capable of receiving, holding, and disbursing participant funds used and generated by participant transactions through the electronic marketplace system. The Examiner construes the bank(s) identified at col. 13, line 62-col. 14, line 3 to be integral with the system (by virtue of their ability to be inter-networked with an optional escrow account maintained by the system purveyor (col. 14, lines 4-5)). The accounts are capable of receiving, holding, and disbursing participant funds

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as demonstrated by the example wire transaction at col. 13, line 62-col. 14, line 5; and col. 14, lines 46-49.

The Examiner notes similar language in claim 53 at lines 1-6. Here, the system further comprises the structure of the accounts database and establishes similar functionality. The Examiner's reading of Nahan et al. (conveyed above) is incorporated here in a showing of the manner in which claim 53 "reads on" the Nahan et al. structure.

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Regarding the language at claim 51, lines 23-24

The language "the transaction processor...at the electronic marketplace" has been considered.

The Nahan et al. transaction processor facilitates (by giving rise to, or "creating") a sales termination event for the selling instance of the item at the electronic marketplace. One example of the manner in which such transaction processor facilitates (or "creates") a sales termination event is by requesting a transfer of funds across participant accounts (discussed above). Such activity allows the transaction to progress to an event at which the sale can be considered terminated.

The Examiner notes that claim 52 recites "means for creating a termination event at the electronic marketplace" (at line 12). As discussed above, the transaction processor, in creating a termination event at the marketplace constitutes equivalent structure to that invoked under 35 USC 112, 6th paragraph, by the recitation "means for creating a termination event at the electronic marketplace". See below for a further discussion of the language at claim 52, lines 12-19.

Regarding the language at claim 51, lines 24-27

The recitation "the termination event locking the data record for the item selling instance to prevent the item from being sold twice and the termination event creating at least two classes of potential purchasers from the open audience of internet participants" has been considered.

The Examiner notes that such recitation is removed from the functions of the transaction processor itself. That is, the transaction processor functions to facilitate a particular event, however it is the event, rather than the processor which then gives rise to the activity described in regard to the locking of the data record for the item selling instance and the activity described in regard to the creation of at least two classes. These functions are traceable only to the termination event and not to the processor itself. Accordingly, such recitations do not provide the patentable moment necessary to distinguish the structure of the instant system from the structure of the Nahan et al system.

The Examiner notes similar language in claim 52 at lines 12-19. Here, Applicant invokes structure under 35 USC 112, 6th paragraph. The structure considered to be invoked under 35 USC 112, 6th paragraph is that invoked by the phrase "means for

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creating a termination event at the electronic marketplace" (line 12). The Examiner does not construe the language "the termination event closing...second tier price for the item" (lines 12-19) as contributing to the structural invocation under 35 USC 112, 6th paragraph, since this language serves to modify the termination event, rather than the creating of the termination event. (see MPEP 2181). Accordingly, the structure invoked by such recitation under 35 USC 112, 6th paragraph is met by the Nahan et al. disclosure of a means for creating a termination event at the electronic marketplace (discussed above).

Regarding the language at claim 51, lines 28-33

The recitation "the first class...for the item selling instance, and at least a second class...for the item selling instance" has been considered.

It is noted that such recitation serves to further describe language which is already removed from the function of the transaction processor itself. Again, the transaction processor functions to facilitate a particular event, however it is the event, rather than the processor which then gives rise to the activity described in regard to the creation of at least two classes of potential purchasers from the open audience of internet participants. This function is traceable only to the termination event and not to the processor itself. Accordingly, such recitation does not provide the patentable moment necessary to distinguish the structure of the instant system from the system structure of Nahan et al.

Nevertheless, it appears that the Nahan et al. system is capable of creating at least two classes of potential purchasers from the open audience of internet participants. This is because Nahan et al. teaches dealer-to-dealer transactions (see col. 2, lines 52-57; col. 4, lines 13-15; and col. 13, lines 29-34); and consumer-to-consumer transactions (see col. 2, lines

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57-59; and col. 13, lines 47-48). Other permutations of such transactions appear enabled. In addition, Nahan et al. teaches that the system has access to both a "suggested retail price" and a "wholesale price" (see col. 13, lines 14-17). As is customary, a suggested retail price is the price recommended to be charged to a consumer, while a wholesale price is a different (normally lower) price expected of a dealer. This paradigm established by Nahan et al. creates a first class having access to purchase the item by access to a participant account (discussed above) for a first tier price ("retail" price) for the item for the item selling instance; while also creating a second class having access to purchase the item by access to a participant account (discussed above) for a second tier price ("wholesale" price) for the item.

The Examiner notes similar language in claim 52 at lines 15-19. Such language has been similarly treated.

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Regarding the language at claim 51, lines 34-36

The language "wherein the participant seller...at the electronic marketplace" has been considered.

However, such language moves to qualify limitations put on the participant seller, rather than limitation put on the structure of the system itself. As discussed above, the Nahan et al. system is capable of creating any selling instance whether such instance represents a legally binding or non-binding offer to sell the item. The language recited here further embellishes legal constraints intended to be placed on the participant seller in a "binding" legal arrangement. Neither the constraints placed on the participant seller, nor the nature of the selling instance as legally "binding" serve to effect any structural distinction between the system of the instant invention and the system of Nahan et al.

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Regarding the language at claim 52, line 2

The recitation that the electronic presentment is of a non-fungible item for sale has been considered.

The Nahan et al. system particularly receives electronic presentment of a non-fungible item for sale (see col. 5, lines 4-9).

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Regarding the language at claim 53, line 4

The language "book entry transaction" has been considered.

The further designation of the specific form of entry transaction does not serve to structurally distinguish the instant system from the system disclosed by Nahan et al. Moreover, through a reading of Nahan et al., it is clear that the system is capable of supporting authorization of the transfer of funds by book entry transaction.

Response to Arguments

Applicant's arguments with respect to claims 51-53 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stockfeld (U.S. Patent No. 2,398,677) discloses a selling control system and machine therefore. Stockfeld discloses an electronic marketplace (page 1, col. 1, lines 1-18) comprising means to lock a keyboard in all but one remote location while that location is transmitting or in-use (page 7, col. 1, lines 60-68). This locking means provides a positive control of the transmitting devices in order to prevent two or more transmitters from "colliding".

Brown (U.S. Patent No. 4,972,318) discloses an order entry and inventory control method and system. Brown discloses tiered pricing (col. 5, lines 4-11) in a inter-networked (col. 2, line 62-col. 3, line 10) order entry, product selection and inventory control environment (col. 1, line 57-col. 2, line 10).

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Suzuki (U.S. Patent No. 5,053,957) discloses an electronic cash register having discount prices selected by customer level. Suzuki discloses that registering different discount unit prices corresponding to the class or level of customers (col. 1, lines 36-42).

Wang (U.S. Patent No. 5,280,619) discloses a system for accessing shared data. Wang reports on existing static and dynamic two-phase locking schemes for use in preventing "collisions" of business transactions (see "Background of the Invention"). Wang proceeds to detail apparatus and method for accessing shared data which substantially eliminates or reduces disadvantages and problems associated with prior apparatus and methods (col. 2, lines 37-41).

Schell, Ernest H.: "Management Software Update (Part 1)"; Catalog Age; May 1991; Vol. 8, No. 5, page 91(4): Schell reports on "The Mail Order Wizard" (Version 3.12) (hereafter "The Wizard") which is used by catalog companies. The Wizard includes wholesale and retail prices with two sets of discounts. Customer codes trigger wholesale or retail prices (see page 97, column 3, beginning at last paragraph).

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Schell, Ernest H.: "Management Software Update (Part 2)";
Catalog Age; June 1992; Vol. 9, No. 6, page 87(4): Schell
reports on "PowerDirect 2000/Controller+" (hereafter

"PowerDirect"). PowerDirect provides entry clerks with a full-
screen product display and merchandise pricing by catalog.

There are five price tiers per item (see page 88, column 4,
beginning at last paragraph). Schell also reports on "The

WizKid" (hereafter "WizKid"). WizKid is a limited version of

The Wizard. Schell reports on the wholesale and retail pricing
levels which can be established using these programs.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey A. Smith
Primary Examiner
Art Unit 3625

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